

Remarks/Arguments:

In the specification, subtitles are added at pages 1 (two instances), 3, 5 and 6 (one instance each). An abstract is added at a separate page 21 that is substantially the same as the abstract submitted with the application at the foot of the PCT cover page. Priority references herein added to page 1 of the specification are also drawn from that PCT cover page. No new matter is added by any of these changes to the specification, which are entered in order to comply with the Examiner's objection to form stated in the outstanding Office Action.

The Examiner has objected to the specification under 37 C.F.R. § 1.75(d)(1) and M.P.E.P. § 608.01(o) as failing to provide proper antecedent basis for the claim term "call control 209". The term "call control" is used in claim 8, and is first defined in the specification at page 3, lines 5-9. Applicant is unclear where antecedent basis is lacking. If the Examiner refers to the reference number "209" that was formerly included within certain claims as not being used exclusively with the term "call control", Applicant responds that the reference numbers have herein been removed, and that the call control function may be properly referred to by other terms so long as there is not a confusing variety of terms. See M.P.E.P. § 608.01(o). Applicant assumes that removing the reference numbers from the claims obviates the antecedent basis objection. If this is in error, Applicant respectfully requests the Examiner more particularly detail the objection so that the Applicant can more fully respond.

In the claims, the Applicant has amended each of claims 1-10 to remove the parenthetical reference numbers that were inadvertently included when this PCT application entered national stage in the U.S. Applicant stipulates that the presence of the reference numbers in the original claims is not to be construed as limiting the claims to the illustrated embodiments, or as limiting any particular claim term to an illustrated component. Applicant has further amended claim 6 to more clearly describe the claimed invention by reciting, under separate subheadings, language that applies when the claimed RNC operates as a serving RNC and when it operates as a drift RNC. Applicant has further amended claim 7 to eliminate the term "resulting from load control and". These changes to claims 6 and 7 are made unilaterally for

clarity and conciseness to better serve a public notice function and to facilitate cost-effective enforcement of future patent rights, and not for reasons related to patentability.

In the outstanding Office Action, the Examiner has rejected all pending claims 1-10 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,230,013 B1 to Wallentin et al (hereinafter, Wallentin) in view of U.S. Patent No. 5,878,350 to Nakamura et al (hereinafter, Nakamura) and U.S. Patent No. 6,078,817 to Rahman (hereinafter, Rahman). Applicant contends that the invention as claimed patentably distinguishes over the cited combination.

Wallentin discloses legs or lines that the Examiner characterizes as macro diversity connection branches, one of which goes between a mobile station (MS) and a radio network controller (RNC) through a base station (BS) and another RNC. The Wallentin invention pertains to effecting a handover of a MS from one BS to another BS. Wallentin does not teach or suggest that this branch is used for transmission power control, and the Examiner does not assert such a teaching or suggestion. Wallentin appears devoid of any teaching relating to transmission power.

Rahman discloses a RNC that monitors the load capacity of a network. If the network is fully loaded upon receiving a new request for access, Rahman teaches that a network load processor of the RNC may release one of a duplicate or triplicate channel element used by one of the MSs. The released channel element is then assigned by the network load processor to the MS that requested access. Rahman discusses transmission power in one instance, a recitation of one prior art patent at col. 2, lines 27-52. That recitation concerns communications between mobile stations and does not concern a RNC controlling transmission power in a branch of a macro diversity connection that goes from a serving RNC to a terminal through a drift RNC and a drift base station, as substantially claimed in each of independent claims 1, 6, 7 and 9.

Nakamura describes controlling transmission power during a soft handover by selecting one of a plurality of radio channels as a reference radio channel. A combining station to which

each BS is connected controls each BS's transmission power so that a receiving quality of the reference radio channel satisfies a prescribed reference quality such as a signal to interference ratio (SIR).

First, assuming *arguendo* the Examiner's characterization of the references are correct and that they may be combined in the manner suggested in the referenced Office Action, the asserted combination fails to render obvious the claimed invention. Specifically, claim 1 recites (A) transmitting information limiting transmission power from the drift RNC to the serving RNC; (B) transmitting information controlling transmission power from the serving RNC to the drift RNC; and (C) transmitting information controlling transmission power from the drift RNC to the drift BS.

As above, Nakamura is the only reference that teaches or suggests power control. Nakamura does not describe coordinating power control between two RNCs as in (A) and (B) above, and appears limited to a single combining station (see col. 5, lines 19-31). Wallentin does describe two RNCs, but only in the context of handing off an MS between two BSs with no teachings relating to power control between the RNCs. As such, no combination of Nakamura and Wallentin appears capable of making the above clauses (A) or (B) obvious. Rahman adds no relevant teaching to the above.

Wallentin describes a leg that goes from a source RNC to an MS through a target RNC and a target BS that is associated with the target RNC. In Figure 1A of Wallentin, the source RNC controls the MS when the MS is in contact with both a source BS and a target BS. In Figure 1B of Wallentin, the source RNC controls the MS when the MS is in contact only with two target BSs. In no instance does Wallentin or Nakamura teach or suggest that information limiting transmission power is transmitted from the target RNC to the source RNC, as in clause (A) above. Clause (B) is clearly novel in light of the combination as Wallentin is the only reference to teach two RNCs, but the target RNC of Wallentin is passive until it becomes the new source RNC. See Wallentin, col. 2, lines 26-65. The combination fails to satisfy at

least the clauses (A) or (B) above because there is no teaching or suggestion that two RNCs can exchange information concerning transmission power.

Claims 6 and 7 each include language similar to clauses (A), (B) and (C) above, and claims 8 and 9 each include language broadly similar to clause (A) above. Therefore, Applicant contends that the asserted combination fails to make obvious all claim limitations as required under M.P.E.P. § 2143.03, and that the Office Action fails to make out a *prima facie* case of obviousness as to any of claims 1-10. See M.P.E.P. § 2142 et. seq.

Additionally, claim 1 recites that transmission power control comprises an outer loop control and a closed loop control. Claim 7 also recites outer loop control. The Examiner does not indicate where any of the references teach or suggest outer loop control and/or closed loop control, and it is not apparent to Applicant that any of the references do so teach. Therefore, the asserted combination fails to make obvious all claim limitations of claims 1-5 and 7 for this additional reason.

Second, Applicant contends that the references teach away from their combination as set forth in the Office Action. See M.P.E.P. §§ 2141.02 and 2145, part X, paragraph D. Specifically, the entire teachings of the cited art relating to transmission power control reside within Nakamura. Nakamura is directed to using a combining station to control transmission power levels at two BSs that are each in contact with a MS. Nakamura appears to be limited to two or more BSs under the control of a common combining station (see col. 5, lines 19-31), else the respective power levels of each BS could not be set with reference to a single reference channel (see abstract; col. 3, lines 28-36 and 51-60). As such, it is unclear how the teachings of Nakamura could be modified for the situation where a MS is handed off from a BS under the control of one RNC to another BS under the control of a different RNC, without undermining its principle of operation or changing its whole teaching. Such a situation clearly falls within the scope of the present invention. Rahman similarly appears limited to BSs under the control of a single RNC.

Merely interposing the two RNCs of Wallentin over the respective BSs of Nakamura appears insufficient absent some evidence of ordinary skill in the art. The present invention recites at page 3, lines 21-34; page 5, line 13-15; and page 7, lines 22-29, that the Iu^{bis} interfaces of various RNCs may differ from one another. Where such interfaces do so differ, simply superimposing two RNCs with an inter-RNC transport link 32 of Wallentin over the two base stations BS1 and BS2 of Nakamura appears to result in many instances in an inoperable invention. See M.P.E.P. § 2143.01 (Proposed Modification Cannot Render the Prior Art Unsatisfactory for its Intended Purpose). The present application enables that format change between disparate Iu interfaces. The references do not indicate such a format change, and it is not apparent that such a change is within ordinary skill.

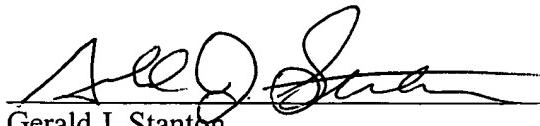
Third, the Applicant asserts that there is no motivation or suggestion to combine the references as asserted in the Office Action. See M.P.E.P. § 2143.01. Wallentin is directed to soft handovers of a MS from one BS to another BS, based on factors such as BS utilization and actual/predicted movement of the MS. Rahman is directed to increasing network capacity by releasing a duplicate channel element to an additional MS when the additional MS requests access and the network is full. Nakamura is directed to controlling transmission power among differing BSs. While Wallentin and Rahman might possibly be combined for their respective teachings concerning network capacity utilization, there appears no such overlap with Nakamura. The problem sought to be resolved by Nakamura differs from the problem sought to be solved by either Wallentin or Rahman. There appears no motivation in the references to combine either Wallentin or Rahman with Nakamura, and the Office Action recites none. It appears the Examiner has fallen prey to impermissible hindsight in combining all three references, and the Applicant asserts that the combination is improper for teaching away from one another, for no motivation to combine, and for impermissible hindsight.

For at least the above reasons, the Applicant contends that claims 1-10 are not obvious over the combination of Wallentin, Nakamura, and Rahman. Applicant submits that the above detailed arguments successfully traverse each and every outstanding rejection, and respectfully requests that the Examiner withdraw all rejections and pass claims 1-10 to

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issuance without further delay. Applicant's undersigned representative welcomes the opportunity to resolve any issues that may remain via teleconference, at the Examiner's discretion.

Respectfully submitted:


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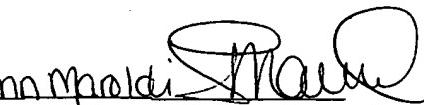
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September 18, 2003
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